IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Civil Revision Application No.l80 of 2005

Shri Ashok Kushaba Sonar ...Petitioner

vs

Shri Daulat B Kirve and ors ..Respondents

Mr. Dilip Bodake for petitioner

CORAM: A.M KHANWILKAR J.

Dated l6.l.2006

P.C:

l. Heard the learned counsel for the petitioner. I see no reason to depart from the conclusion drawn by the lower court that the suit raises issues of title and possession in respect of the suit property. That issue can be adjudicated upon by the civil court. To get over this position the learned advocate for the petitioner contends that the first part of the relief (a) in the suit clearly indicates that the relief granted by the Consolidation Officer in respect of the disputed property is illegal and should be set aside. Even if the petitioner is justified in this submission that such relief cannot be granted by the civil court in view of the bar under section 36A of the Consolidation Act, however, later part of relief (a) relates to issue of title and possession of the suit property. That issue will be exclusively

within the power of the civil court. Viewed in this perspective, the entire suit cannot be said to be without jurisdiction. Hence no interference is required with the impugned order except to observe that the trial court will decide the suit and take into consideration the relevant legal position while granting final relief.

2. The learned counsel for the petitioner,however, relied upon the decision of our High Court reported in 200l(3) All MR l28 in the case of Yeshwant Ramchandra Dhumal through LRs vs Shri Shankar Maruti Dhumal and anr and another decision reported in 200l(2) All MR 4l4 in the case of Shri Narayan S Bite and ors vs Shri Mahadeo Shripati Pise and ors to contend that the civil court cannot decide the issue of possession in view of the bar under section 36A of the said Act. This submission does not commend to me. Section 36A of the Act operates as bar against the civil court in relation to the question required to be settled or decided or dealt with by the State Government or any Officer or Authority under the said Act. In the present case, if the plaintiff was to succeed in showing that the petitioner- defendant has no title in respect of the suit property, it would necessarily follow that the petitioner has no right to remain in possession

of such property and as an incidental relief the civil court would be entitled to direct the petitioner to remove himself from the suit property so as to put the respondent in possession thereof. That direction or relief in noway interferes with the issues that are required to be settled, or decided or dealt with by the State Government or any Officer or Authority under the Act of l947. Viewed in this perspective and having regard to the facts and circumstances of the present case the suit with regard to the issue of title and possession instituted by the respondent-plaintiff will have to proceed in accordance with law.

Revision is dismissed.